



Does informal tenure result in land inequality? A critique of tenure formalisation reforms in Cambodia

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ABSTRACT

Tenure reform is a contentious area of agrarian policy debate. Policies promoted by international financial institutions view locally-based informal tenure as a barrier to the efficient market allocation of land. In response, land titling projects install global-standard tenure frameworks that support functioning rural land markets. The opposing view holds that locally-based informal tenure secures the land holdings of the most vulnerable and should be strengthened, not replaced. Drawing on evidence from smallholder land markets in Cambodia, this paper brings new perspectives to these debates. It finds informal tenure is associated with a distribution of land that is both inequitable and inefficient from an output perspective. It is argued that this distribution is not caused by deficient land markets, but other underlying factors that render smaller farms less economically viable despite being more productive than larger farms. The study explores the implications of these findings for orthodox representations of informal tenure and land markets, the prevalent land titling programmatic approach and discussions about land distribution efficiency more generally.

1. Introduction

Over the last two decades, land titling has emerged as a popular rural development intervention promoted by international development organisations across the globe (Deininger, 2003; Hall et al., 2011; Hirsch, 2011). A key theoretical underpinning of this approach is that ‘local’ or ‘informal’ tenure constrains the efficient market allocation of land, which, in turn, contributes to poverty and constrains economic growth (Deininger and Feder, 2001; Feder and Feeney, 1991; Feder and Nishio, 1998). It is argued that informal tenure and land markets should be replaced with global-standard institutions based on the principle of formal private ownership. Once markets are operational, the argument goes, land will be allocated in an efficient manner through property transactions. Following this logic, Cambodian policy makers have characterised informal tenure in the country’s smallholder agricultural sector as a cause of inequality, inefficiency, a constraint to economic growth and a driver of poverty (Royal Government of Cambodia, 2008; World Bank, 2002). Consequently, there have been a number of projects to provide land titles to smallholder farmers across the country over the past decade (Biddulph, 2010; Grimdsitch and Henderson, 2009; Grimdsitch and Schoenberger, 2015).

This study questions orthodox representations of informal tenure in reference to Cambodia’s smallholder farms using data from a Cambodia Development Resource Institute (CDRI 2007) survey of smallholder tenure practices and associated land markets. The CDRI survey includes

questionnaire results from 970 smallholder farmer households across the country whose tenure has not been formalised. Drawing on the survey results, the study explores how land is distributed across the population, the role of property transactions in the observed distribution, and asks whether the distribution is desirable from an equity and efficiency perspective. The paper also draws on material from an unpublished manuscript about land administration in Cambodia (Jailin and Flower, 2013).

Through an examination of informal land markets in rural Cambodia, this study hopes to contribute to the lively debate on informality. There have been numerous studies examining the structural characteristics of informal tenure in relation to land distribution in rural areas. These studies have tended to focus on the ‘local’ attributes of informal tenure, either viewing these as appropriate to the needs of the population’s they serve (Toulmin, 2009) or negative structures that preclude market exchange (De Soto, 2000). However, there have been few empirical studies exploring how informal tenure supports the day-to-day functioning of land markets in practice (Chimhowu and Woodhouse, 2006). This study, therefore, adds to debates about informal tenure by exploring the mechanics of property exchanges associated with them.

Developing a better understanding of how informal agricultural land markets work in practice is of great policy importance given that land titling programmes are amongst the most replicated agrarian interventions, and are underpinned by the theoretical assumption that

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informality equates to inefficient land markets. This study suggests that some of the fundamental assumptions made by policy makers about informal tenure and its impacts on land markets are not in evidence in Cambodia's smallholder agricultural sector.

2. (In)formal tenure and land market (in)efficiency

A benefit of replacing informal tenure with land titles is thought to be increased land market transactions, which, in turn, facilitates the market reallocation of property to its most efficient use. This section explores the issues associated with informal tenure and land titling in relation to land markets and distribution.

2.1. The rationale for land tenure formalisation

The global policy swing toward land tenure interventions occurred in the mid-1990s as a result of changes in theoretical positions adopted by leading development economists (Brandao and Feder, 1995; Deininger and Feder, 2001; Deininger and Binswanger, 1999; De Soto, 2000; Feder and Nishio, 1998). The ascension of 'new institutionalism' as the paradigm informing international development policy has led to a reconceptualisation of the role of the state in land markets (Stiglitz, 2001). State contraction, promoted by international financial institutions in the 1980s under the banner of the Washington Consensus (see Williamson, 1993), has been replaced by a more interventionist approach, which invests in the state the responsibility to regulate markets (Rodrik et al., 2002). In relation to land markets, 'land titling' has become the orthodox policy prescription, entailing the replacement of local 'informal' tenure systems with global-standard 'formal' models based on western notions of property registration (Besley, 1995; De Soto, 2000; Field, 2005). The programmatic approach gained major policy traction with the publication of internationally best-selling book, *The Mystery of Capital*, by Peruvian economist Hernando de Soto (2000). De Soto claims that land tenure formalisation can end global poverty by unlocking the capital generating potential of informally held property.

A key rationale for replacing informal tenure is that such systems may preclude functioning land markets (Deininger and Feder, 2001; Deininger and Binswanger, 1999). The argument goes that informal ownership is not recognised by the state or other formal sector institutions (such as banks or utility companies), and, therefore, market actors have little reliable information on which to base decisions. There are no guarantees, for example, that an informal contract of sale for an informally held plot will be honoured because a buyer has no legal recourse if the contract is breached (De Soto, 2000). As a result of this uncertainty, there are high transaction costs in informal land markets as assets are priced to reflect the high risk associated with informal transactions. Resultantly, according to Feder and Feeny (1991: 140), informally held property does 'not reflect its true social value, and the extent of land transactions will be less than optimal.'

Land titling programmes are one of a number of market-oriented interventions that aim to 'fix' land markets. Land titling provides the foundation for increased land market transactions by formalising ownership rights, and building up institutional structures, such as a cadastre and land registry, to secure tenure and record land transactions (Brandao and Feder, 1995; Feder and Feeny, 1991; Feder and Nishio, 1998). In this way, the risks associated with informal ownership are removed, providing market actors the confidence to buy and sell land without fear that their asset will be appropriated. From this foundation, other interventions can actively effect market redistribution by providing incentives to stimulate market transactions, such as targeted conditional cash transfers for the landless to purchase agricultural land from large land holders (Deininger and Binswanger, 1999).

The assumed relationship between titling and increased transactions is often cited as an important reason to implement titling projects. In

this regard, perhaps the best known World Bank titling intervention to date is the Thailand Land Titling Project (TLTP), which has expended more than USD183 million systematically titling agricultural land holdings, developing formal institutions to enforce the property rights associated with titles and to facilitate their transfer (Leonard and Narintarakul, 2006). A main aim of the project is to 'develop a fully functioning land market, which would improve allocative efficiency from sale of land' (World Bank, 2003: 2). The Thai project is regarded by the Bank as a success story and has become a best-practice model replicated across the globe (Bowman, 2004). In the Southeast Asian region alone – the focus of this study – there have been World Bank-funded titling projects in Philippines, Indonesia, Lao PDR and Cambodia. As with the TLTP, procedural documents for titling projects often identify 'efficient land markets' as a key project outcome and, as such, increased market transactions is often included as a key performance indicator (e.g World Bank, 2005).

Arguments favouring global-standard land titles over local tenure have had a major impact on agricultural development programming, as land titling has emerged as one of the most replicated agricultural development interventions globally (Deininger, 2003; Hall et al., 2011; Ho and Spoor, 2006; Markussen, 2008). In the fiscal year of 2004 alone, it is estimated that the World Bank lent over 1 billion dollars to such land titling projects (Conning and Deb, 2007). Yet, despite the proliferation of such projects, there have been few attempts to interrogate an intellectual corner stone of land titling: that informal tenure precludes efficient land markets. Hence, a key aim of this paper is to address this gap by providing an empirical assessment of 'informal' rural land markets in Cambodia.

2.2. Informal tenure and 'inefficient' land distribution

An important aim of titling interventions is to remove the market constraints of informal tenure and, in doing so, to enable the market to effect an 'efficient' distribution of land. An important question, therefore, is what exactly is meant by an 'efficient' distribution of land and to what extent land titling can contribute to such a distribution?

Land distribution efficiency is often viewed in terms of yield. From this perspective, it is desirable that land is allocated to those who can produce the most grain per hectare. In labour intensive agricultural economies, smaller farms produce more grain per hectare than larger farms because of their more effective utilisation of labour (Carter, 1984). Thus, in such contexts an efficient distribution of land can equate to an equitable distribution of land, with assets distributed across smallholders, rather than concentrated in the hands of an elite. Informal tenure is viewed as a barrier to achieving the market allocation of land in this way, because transaction costs embedded in informal markets distort land values, meaning large land-owners lack the incentive to sell to more productive smallholders (Deininger and Binswanger, 1999). Once informal tenure systems are replaced with formal titles, the orthodoxy holds, land markets will function correctly, and price mechanisms will provide larger farmers the incentives to sell to more productive small farmers, resulting in a distribution of land that is desirable from an efficiency and poverty reduction perspective (Deininger, 2003). As World Bank economists Klaus Deininger and Hans Binswanger note: 'smallholder farms are desirable from both equity and an efficiency perspective... if all markets were competitive [secure private ownership] would automatically lead to socially and economically desirable land market transactions'. As a result, tenure formalisation provides 'an opportunity to address land reform that is less detrimental to the functioning of markets [than redistribution]' (Deininger and Binswanger, 1999: 263). In other words, replacing informal tenure can achieve a similar outcome to redistributive land reform, but through market mechanisms: without the need to expropriate property from large landholders, keeping perceptions of property rights strong and, therefore, not harming investment incentives.

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